

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,

Plaintiff,

v.

D. CHILDRESS, et al.,

Defendants.

No. 1:21-cv-01793-DAD-SAB (PC)

ORDER DECLINING TO ADOPT FINDINGS  
AND RECOMMENDATIONS AND  
REFERRING THE PENDING MOTION TO  
PROCEED *IN FORMA PAUPERIS* BACK TO  
THE MAGISTRATE JUDGE

(Doc. No. 9)

Plaintiff Lance Williams is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 18, 2022, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's motion to proceed *in forma pauperis* (Doc. No. 7) be denied because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 9.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days of service. (*Id.* at 4.) After receiving an extension of time in which to file objections,

1 plaintiff filed objections to the pending findings and recommendations on March 11, 2022. (Doc.  
2 No. 12.)

3 In his objections, plaintiff argues that he filed his initial complaint while housed at  
4 Corcoran State Prison, where the defendants in this action allegedly continued to threaten and  
5 abuse him. (*Id.*) Plaintiff contends that he should therefore be granted an exception to the three  
6 strikes bar under the imminent danger exception to § 1915(g). (*Id.*) In contrast, the findings and  
7 recommendation state that “[a]t the time Plaintiff filed the instant complaint, he was housed (and  
8 is currently housed) at Folsom State Prison.” (Doc. No. 9 at 3.) The findings and  
9 recommendations thus concluded that defendants were no longer responsible for plaintiff at the  
10 time of his filing and that the exception for imminent danger would therefore not apply. (*Id.* at 4.)  
11 However, as plaintiff argues in his objections, it appears to the court that his initial complaint  
12 indeed may have been filed from Corcoran State Prison, where the alleged threats and harms took  
13 place. (*See, e.g.*, Doc. Nos. 1 at 1, 13; 12 at 31.) The undersigned has been unable to identify  
14 anything in the record of this case suggesting that plaintiff’s complaint was in fact filed by him  
15 from Folsom State Prison, as stated in the pending findings and recommendations. Although  
16 plaintiff has apparently been moved to Folsom State Prison since the filing of his complaint, the  
17 imminent harm exception to the three strikes bar applies to the circumstances at plaintiff’s  
18 location when the complaint was filed, not where the plaintiff is now being held. *See Andrews v.*  
19 *Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (“We are in agreement with all of these cases in  
20 holding that it is the circumstances at the time of the filing of the complaint that matters for  
21 purposes of the ‘imminent danger’ exception to § 1915(g).”). As such, the undersigned will  
22 decline to adopt the findings and recommendations at this time, referring plaintiff’s motion to  
23 proceed *in forma pauperis* (Doc. No. 7) back to the assigned magistrate judge for further  
24 consideration in light of plaintiff’s objections and his contention that he was housed at Corcoran  
25 State Prison at the time he filed his complaint and in imminent danger at that time.

26 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the  
27 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
28 including plaintiff’s objections, the undersigned declines to adopt the pending findings and

1 recommendations at this time. Instead, out of an abundance of caution, the pending motion to  
2 proceed *in forma pauperis* (Doc. No. 7) will be referred back to the magistrate judge for further  
3 consideration in light of plaintiff's objections for reissuance of findings and recommendations.

4 Accordingly,

- 5 1. The court declines to adopt the findings and recommendations issued on January  
6 18, 2022 (Doc. No. 9); and
- 7 2. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 7) is referred back to the  
8 assigned magistrate judge for the issuance of findings and recommendations in  
9 light of the objections filed by plaintiff and for further proceedings.

10 IT IS SO ORDERED.

11 Dated: April 7, 2022

12   
UNITED STATES DISTRICT JUDGE